

JPA File No.: 06-160 I
AG Contract No.: KR07-0079TRN
Project No.: CM-PHX-0 (041) A
Project: 24th St: Chipman to Roeser
Roads
Section: 24th St.
TRACS 0000 MA PHX SS531 03R /
01C
Budget Source Item No.: City

120941 . .

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PHOENIX

THIS AGREEMENT ("Agreement") is entered into this date May 10th 2007, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its City Manager (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Phoenix City Charter Chapter Article II Section 2(i) and Arizona Revised Statutes § 11-951 to 11-954 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The City requests the State submit to the Federal Highway Administration (FHWA) an application for approval of federal funds for Federal Fiscal Years (FFY) 2011, in an estimated total amount of \$1,700,000.00 for the acquisition of right-of-way for a multi-use path at 24th Street from Chipman Road to Roeser Road, herein referred to as the "Project". Federal funds for the Project are programmed in the 2011 of the Maricopa Association of Governments (MAG) Transportation Improvement Program (TIP)/State Transportation Improvement Program (STIP) as (PHX11-737).

4. The City and MAG selected the Project, within the boundary of the City. The City meets the FHWA certification requirement to construct and administer the Project and will take full responsibility of all Project costs until such time of federal reimbursement in FFY 2011. If federal funds are not available, the City agrees to pursue completion of the Project upon funds being available in the future.

NO. 28906
Filed with the Secretary of State
Date Filed: 5/10/07
Janice K. Brewer
Secretary of State
By: [Signature]

5. The City, in order to obtain federal funds for the right-of-way of the Project, is willing to advance City funds to complete the Project prior to programmed year.

6. The interest of the State in this Project is in the acquisition of federal funds and facilitating reimbursement of said federal funds for FFY 2011, in accordance with 23 U.S.C. 115. Upon State & FHWA approval of the Categorical Exclusion that recently approved as of February 5, 2007, the City will submit to the State the Request for right-of-way authorization. The State will submit the Project to the FHWA for authorization to advance the right-of-way acquisition of the Project. It is understood and agreed to by the Parties herein, that authorization of this Project does not constitute a commitment, guarantee or obligation on the part of the State.

7. The City shall acquire right-of-way of the Project consistent with Arizona Revised Statutes. The estimated right-of-way costs for said Project are as follows:

TRACS No. SS634 01C

Total Estimated Right-of-Way & Construction Cost of the Project	\$2,500,000.00
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Total Estimated Funds Available (FFY 2011) @70% of \$2,428,571.43 (Cap)	\$1,700,000.00
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Estimated City Funds @ 30% of \$2,428,571.43 (Cap)	\$ 728,571.43
Estimated City Funds @ 100%	\$71,428.57

Total Estimated City Advance Funds

(Difference between estimated cost, funds available and shared funds)	\$ 800,000.00
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Reimbursement of the Project Costs

Fiscal Year (FFY) – 2011

Estimated Federal Aid Funds	\$1,700,000.00
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Total Estimated Reimbursement due the City	\$1,700,000.00
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THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. As required by the FHWA, provide to the City, the design review of the Project plans, studies and related documents, and when appropriate, provide comments which will be incorporated into the construction documents

b. On behalf of the City, perform certain work and prepare certain documents required by the FHWA to qualify certain projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. (when specifically authorized by, for and on behalf of the City, and at no cost to the State).

c. On or after October 1, 2010, and upon receipt of an invoice from the City, reimburse to the City obligated federal funds in an amount estimated at \$1,700,000.00, for Federal Fiscal Year (FFY) 2011. However, the aforementioned reimbursement amount is subject to funds availability.

d. Not be obligated to incur any expenditure in the Project, should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this Agreement.

2. The City shall:

a. Pay all costs for right-of-way acquisition in the amount not to exceed \$2,500,000.00 for the estimated total right-of-way cost of the Project work provided for in this Agreement, including the amount of federal aid to be reimbursed in FFY 2011.

b. Serve as lead agency for the Project and be responsible for advancing the design and construction of the Project. Be responsible for all payments to consultants and contractors associated with this advancement.

c. Provide the State any required preliminary engineering and planning studies, the environmental analysis and design of the Project.

d. Be responsible for sharing the cost of construction work covered by this Agreement with FHWA, each in the proportion prescribed and determined by FHWA.

e. On or after October 1, 2010, provide appropriate documentation to the State of the actual costs expended by the City for the Project work, along with an invoice for FFY 2011 reimbursement of federal funds at (70%) based on the incurred, eligible costs associated with the Project and paid by the City. However, the aforementioned reimbursement amount is subject to funds availability.

f. Provide the State with documentation from MAG at the time of authorization/obligation, committing to the conversion of federal funds, in the amount shown in the current TIP. If MAG should advance the conversion year of federal funds, and a formal approval through the Regional Council and a TIP/STIP amendment is approved, then the City will request the MAG send a letter to the State requesting conversion of funds be advanced.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project and related reimbursement. Further, this Agreement may be cancelled at any time prior to the Project right-of-way acquisition, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to complete said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith, cost over-runs and any consultant claims. It is understood and agreed that the State's participation is confined solely to securing Federal funds; and that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of said Project right-of-way activities covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this

Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement, and both the State and the City shall be afforded like interests and rights under the statute.

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by Arizona Revised Statutes § 12-1518 as applicable.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax


City of Phoenix
Attn: Ray Dovalina, Jr., PE
200 W. Washington St., 5th FL
Phoenix, AZ 85003-1611
(602) 262-4057
(602) 495-2016 Fax

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF PHOENIX, An Arizona Municipal
Corporation, Frank Fairbanks, City Manager

STATE OF ARIZONA
Department of Transportation

By 
JEROME E. MILLER
Neighborhood Services Director


By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST:

By 
Mario Paniagua
City Clerk



G:\City of Phoenix Advance r/w and construction
Draft 1 ghc 1/10/07, Revised Draft 2 2/28/07
Initial Draft by Ray Dovalina, COP 12/11/06
FINAL draft 4/3/07 ghc


CITY CLERK DEPT.
2007 APR 30 PM 2:23

ATTORNEY APPROVAL FORM FOR THE CITY OF PHOENIX

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 25th day of April, 2007.

A handwritten signature in black ink, appearing to read "Daniel L. Brown", is written over a horizontal line.

ACTING City Attorney

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action: <input type="checkbox"/> Bid Award <input type="checkbox"/> License Application <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other	OR	Legal Document: <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Emergency Clause? (for use only w/ord. or res. requests)
IMPACTED DISTRICT(S)	DISTRICT 8	ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?	<input type="checkbox"/>
SUBJECT	INTERGOVERNMENTAL AGREEMENT WITH ADOT: 24TH ST MULTI-USE PATH - CHIPMAN RD TO ROESER RD (FEDERAL AID PROJECT)		
REQUESTED AGENDA DATE	4/18/2007	PREPARED BY	Name <u>Bob Robinson</u> Department <u>Neighborhood Services</u> Phone <u>495-0129</u>
APPROVALS	Division Head: Department Head:	Kate Krietor Jerome E. Miller	If prepared for another department: Department Name: <u>Street Transportation</u> Approval: <u>Ross Blakely</u>
BID AWARD INFORMATION	Bid Surety Required? <input type="checkbox"/> Submitted by Low Bidder? <input type="checkbox"/> Contract Required? <input type="checkbox"/>	Performance Surety Required <input type="checkbox"/> Amount? _____ Requisition No. _____	
CONTRACT INFORMATION	Contract Amendment? <input type="checkbox"/> If Yes, Current Contract No. _____ Approved by: _____ Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> on Date: _____ Formal Action <input type="checkbox"/>		
BUDGET INFORMATION	\$ <u>1,700,000.00</u> To Be Encumbered? <input type="checkbox"/> Source of Funds: _____ Fiscal Year? _____ <u>Congestion Mitigation Air Quality Funds (CMAQ)</u> Fund Center(s) (SAP-FM): _____ Commitment Item(s) (SAP-FM): _____ Availability of Funds Approval <u>Lauri L. Wingenroth</u>		
CITY MANAGER'S OFFICE	Approved by Ruth Osuna & Wylie Bearup, P.E. (Acting) 4/6/07		CM Control No. 72
CITY CLERK DEPARTMENT	Council Action Taken: <u>Adopted</u> Ordinance Number: _____ Resolution Number: <u>20497</u> Comments: _____		
		RCA No.	<u>55110</u>
		Contract No.	_____
		Meeting Date	<u>4/18/2007</u>
		Item No.	<u>51</u>

ITEM**DISTRICT 8****INTERGOVERNMENTAL
AGREEMENT WITH ADOT:
24TH ST MULTI-USE PATH -
CHIPMAN RD TO ROESER RD
(FEDERAL AID PROJECT)**

Request authorization for the City Manager, or his designee, to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) requiring ADOT to submit to the Federal Highway Administration a letter from the City wherein the City requests 1) Federal Highway Administration authorization for the City to accelerate the timing of the 24th Street Multi-Use Path project, and 2) Federal Highway Administration authorization for the City to use, prior to year 2011, approximately \$2.4 million in 2006 bond funds as the City's matching funds portion of the grant project.

The initial section of the path, from Broadway to Chipman roads, was completed in 2006. The IGA will provide for earlier development of the next section of the path from Chipman to Roeser roads .

The City intends to accelerate project timing for right-of-way (ROW) acquisition for the 24th Street Multi-Use Path from Chipman Road to Roeser Road by allowing the City to use, as the City's matching funds portion of the grant project, approximately \$2.4 million in 2006 Bond funds prior to year 2011. The City expects to receive the Federal Highway Administration grant of \$1.7 million in year 2011 and will use those funds for construction of the path.

Financial Impact

The City has been awarded a \$1.7 million Congestion Mitigation Air Quality (CMAQ) grant to continue construction of a multi-use path that will eventually connect the Rio Salado Habitat Restoration Area with South Mountain Park. The \$1.7 million federal grant is scheduled to be disbursed in FY 2011 to support completion of the next section of the path from Chipman to Roeser. In order to expedite the project, the City intends to utilize approximately \$2.4 million in bond funds to proceed with ROW acquisition and site preparation. This represents the City's matching funds contribution to the project. When the \$1.7 million CMAQ grant is received by the City in year 2011, those funds will be used to construct the multi-use path. Acquiring the ROW sooner, rather than waiting until 2011, will create readiness to immediately construct the project when the FY 2011 CMAQ funds are available and will maintain momentum of ongoing revitalization activities. When title reports and acquisition due diligence have been completed, staff will return with a Request for Council Action on the ROW acquisitions.

Funding is available in the Neighborhood Services 2006 General Obligation Bond Fund Program.

Citizen Notification

The path is a key element of the South Mountain Revitalization Strategy adopted by Council in 1999 and is within the South Phoenix Village Neighborhood Initiative Area. The City has conducted several public meetings on the multi-use path and the project is supported by the community.

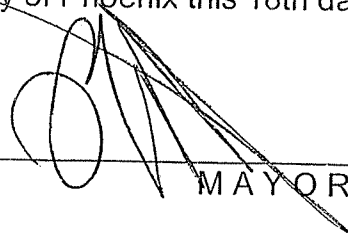
RESOLUTION 20497

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) REQUIRING ADOT TO SUBMIT TO THE FEDERAL HIGHWAY ADMINISTRATION A LETTER FROM THE CITY WHEREIN THE CITY REQUESTS (1) FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION FOR THE CITY TO ACCELERATE THE TIMING OF THE 24TH STREET MULTI-USE PATH PROJECT, AND (2) FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION FOR THE CITY TO USE, PRIOR TO YEAR 2011, APPROXIMATELY \$2.4 MILLION IN 2006 BOND FUNDS AS THE CITY'S MATCHING FUNDS PORTION OF THE GRANT PROJECT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager, be and hereby is, authorized to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) requiring ADOT to submit to the Federal Highway Administration a letter from the City wherein the City requests (1) Federal Highway Administration authorization for the City to accelerate the timing of the 24th Street Multi-Use Path project, and (2) Federal Highway Administration authorization for the City to use, prior to year 2011, approximately \$2.4 million in 2006 bond funds as the City's matching funds portion of the grant project.

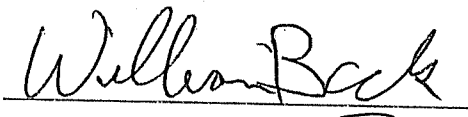
PASSED by the Council of the City of Phoenix this 18th day of April, 2007.


MAYOR

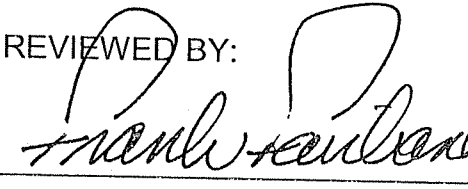
ATTEST:


 City Clerk


APPROVED AS TO FORM:

 Acting City Attorney


REVIEWED BY:

 City Manager

MHW:tml/CM 72/4-18-07/688222v1 

CITY CLERK DEPT.
2007 APR 16 PM 1:34


Resolution 20497

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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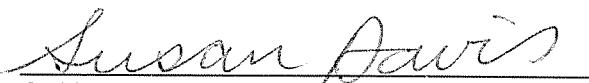
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR07-0079TRN (**JPA 06-160-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Phoenix, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 7, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:1012037
Attachment